IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3359 OF 2004

M/s. Jain Trading Co., Mumbai .. Petitioner
V/s.
Union of India & Ors. .. Respondents

Mr. K. Shivram with Mr. K. Gopal and Mr. Ajay Singh for the Petitioner
Mr. Suresh Kumar for the Respondents

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 01.02.2005

P.C.:-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the Petitioner and the Respondents. The learned counsel for the Respondents waives service. By consent taken for hearing.

2. By this Petition, the Petitioner is challenging the order dated 28th August' 2003 passed by the Income Tax Appellate Tribunal with regard to a Misc. Petition filed by the Petitioner for rectification of mistake under Sec. 254 (2) of Income Tax Act' 1961.

3. The Income Tax Appellate Tribunal had passed an order on 19.5.2003, pertaining to Assessment year 1999-2000. The Petitioner found certain apparent mistakes in the aforesaid order. Therefore the Petitioner filed a Misc. Application under Sec. 254 (2) of Income Tax Act' 1961 for rectification of those mistakes. Shri Shivram by way of example pointed out that with regard to paragraph 11 of the above order of Tribunal, the Petitioner had

pointed out as under in the said Misc. Application:-

> "The survey party verified the purchases and sales bills and in majority of bills, gross profit rate worked out to 7.27%. Therefore, the survey party applied this gross profit rate and prepared the trading account and as per the trading account, the closing stock was worked out at Rs. 14,28,957/-.
>
> The Applicant states that it has given details of each and every transaction of purchase and sale and G.P. thereon, which has not been looked into by any of the authorities at any stage. The total transactions of purchase, sale and G.P. are about 485 out of which, there are only about 21 transactions of purchase and sale where G.P. is ranging between 7% to 8%. Therefore, the observations that gross profit of 7.26% was as per majority of bills is contrary to the factual position. Thus, applying incorrect G.P. rate to arrive at derived stock would definitely result in working out incorrect closing stock. This important and factual aspect of the matter is not looked into at all by the Hon'ble Bench."

4. During the pendency of the above Misc. Application, the Petitioner had filed an Income Tax Appeal No. 622 of 2003 before this Court. Later the Petitioner withdrew the above Appeal, so as to challenge the above order of 28th August' 2003. Accordingly, the above Appeal was allowed to be withdrawn by this Court on 20th December' 2004.

5. Shri Shivram the learned counsel for the Petitioner pointed out that the Petitioner was not afforded any hearing whatsoever by the Income Tax Appellate Tribunal, before the above order dated 28th August' 2003 was

passed. The learned counsel for the Petitioner also

pointed out that various factual errors were pointed out to the Tribunal, but some have not been properly considered by the Tribunal.

6. Shri Shivram emphasised that the total transactions of purchase, sale and G.P. are about 485 and out of which only in about 21 transactions of purchase and sale where gross profit is ranging between 7% to 8%. He therefore, contended that the observations that the gross profit of 7.26% was as per majority of bills is contrary to the factual position. He also pointed out that the above order was in violation of principles of natural justice, as no personal hearing was given.

7. Even Shri Suresh Kumar could not dispute that no hearing was given to the Petitioner, before the impugned order was passed, however, he sought to justify the order contending that the Misc. Application was a review Petition, hence it was rightly rejected by the Tribunal.

8. After hearing both sides and considering the facts and circumstances, we are clearly of the view, that the Tribunal ought to have heard the Petitioner and also ought to have dealt with the specific contentions regarding factual errors, by giving a proper findings.

Hence we do hereby quash and set aside the said impugned order dated 28.8.2003, and remand back the matter to the

Income Tax Appellate Tribunal to consider the said Misc. Application for rectification of mistakes, to be decided strictly on it’s own merits in accordance with law after affording an opportunity of hearing to the Petitioner.

9. Writ Petition stands disposed of accordingly, however with no order as to costs.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)